INDEX OF EXHIBITS

Exhibits	page
(A) PCR, Tr. pg. 75 of trial counsel	10
(B) Evidentiary hearing motion	11
(C) PCR, Tr. pgs. 69-71 of trial counsel and 76-78	12,1
(D) Trial Two, pgs. 13-14 of trial counsel	15,1
(E) Trial Two, pg. 497 of trial counsel	17
(F) Cashier's check from trial counsel	18
(G) Trial Two, pg. 515 of Trial Judge	19
(H) Trial One, pgs. 27-29 of Dr. Gill (Medical Examiner)	21,22
(I) Trial Two, pgs. 145-147 of Lorianne Morrow (Eyewitness)	25,26
(J) Trial Two, pgs. 228-230 of Wendy Lockett (Eyewitness)	28,29
(K) Trial Two, pgs. 331-333 of Dr. Gill	31
(L) Deposition, pgs. 15-21 of Gary A. Rini (Forensic Expert)	33,3

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COPY

KEITH CARNES,	)	
Appellant,	)	
vs.	)	WD No. 72916
	)	
STATE OF MISSOURI,	)	
Respondent.	)	

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
SIXTEENTH JUDICIAL CIRCUIT, DIVISION 5
Honorable W. Stephen Nixon, Judge

KEITH CARNES,	)	
Movant,	)	
vs.	)	Case No. 0816-CV04757
	)	
STATE OF MISSOURI,	)	
Respondent.	)	

RECORD ON APPEAL - TRANSCRIPT
APPEARANCES

For Movant/Appellant:

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Official Court Reporter, Division 5
Sixteenth Judicial Circuit
Jackson County, Missouri

Gayle M. Wambolt, CCR No. 462
Registered Merit Reporter

Case 4:12-cv-00416-BP Document 1-6 Filed 03/30/12 Page 2 of 38

Trial Counsels

PCR Testimony

(10)

A It wasn't me.
Q Okay. Now, did you have -- did you ultimately receive a report that had been authored by Mr. Rini?
A Yes, I received a report from Mr. Rini. It came after the initial sentencing --
Q Okay.
A -- hearing.
Q And do you recall what the contents of that report were, just a short summary?
A Yeah. I mean, I've got the actual report, but the -- with me, but what it said was that based on the pictures that he had looked at, based on his review of the autopsy report, it was his opinion that the witnesses' statements were inconsistent with the physical evidence.
Q Okay. Was that essentially what your defense had been at the second trial or at least part of what your defense had been at the second trial?
A Right. But there's a problem with that because Mr. Rini had never actually come out to Kansas City to observe the actual crime scene, and he was basing it just on pictures that had been sent to him. I discussed this with him a couple of times about how if he did testify, it would only

that I didn't know whether they would sustain the objection for it just being an opinion.
Q Okay. Let me ask you -- but you've previously testified, though, that your defense was partly that the physical evidence at Fish Town was inconsistent with the crime taking place as the witnesses --
A Correct.
Q Okay. Now, these witnesses who were in this area, do you recall any testimony as to what activities they were engaging in while they were in that area?
A Well, they were either doing drugs or selling drugs.
Q Okay. And that would be both Lorianne Morrow and Wendy Lockett?
A Correct.
Q Okay. Did you have the benefit of any report from Mr. Rini at the time you took the case for the second trial?
A No. I told you I didn't hear from Mr. Rini until after the trial was concluded.
Q Okay. So he never testified?
A No, ma'am.

181

EX. A

Q Okay.
A He wasn't available to testify.
Q Okay. And was there any -- as far as the evidence that you presented and the defense, would it be fair to say that you tried to establish the lack of any physical evidence at the scene through cross-examination of some of the state's witnesses?
A Yes, ma'am.
Q Okay. And also through the testimony of the -- cross-examining the medical examiner?
A Yes, ma'am. Spent a lot of time with the medical examiner.
Q That was partly to say that it would be really difficult for somebody to shoot somebody who was laying on the ground and come up with the injuries that resulted in this case?
A Yes, ma'am.
Q Okay. And was there any expert testimony presented at the trial about whether the shooting could have taken place or not taken place in the way that the state's witnesses said?
A No, ma'am. There were no experts called.
Q Okay. Let's see here. Now, when you were discussing the case with Mr. Carnes, did -- can

you kind of give us a -- I don't know exactly how to put it.

But on a scale of 1 to 10, how consistent or inconsistent was he in your discussions with him about wanting to call a crime scene or forensic reconstructionist?
A Are you talking about the first trial or the second trial, ma'am?
Q The second time around.
A The second time around Mr. Carnes and I had discussions about it. In fact, Mr. Carnes would talk to me about it on a regular basis when I would talk to him, and we actually discussed the benefits of it and the fact that I didn't think that we could find somebody who could accurately reconstruct that crime scene because of the contamination of the scene and the timeframe in which we were trying to go back and do that.
Q Okay. And you're talking about, as far as the contamination, the fact that the ambulance personnel had arrived?
A Correct. We got -- you got ambulance personnel there. You've got tire marks through the blood. You've got the fact that it wasn't cordoned off. You have other people having access to it.

(10)

IN THE CIRCUIT COURT OF JACKSON
County, STATE of
Missouri

182

EX. B

State of Missouri
plaintiff
V
KEITH L. CARNES
Defendant

case no. CR03-06321

Motion for an Evidentiary "HEARING"

Come now, KEITH L. CARVES, defendant Prose with the right to retain counsel Pursuant to Missouri Rule 23.04, moves this court for a "Motion for a Evidentiary Hearing" pursuant to State v. Crouch 353 S.W. 2d 597 and Crim. Rule 12(d) and Crim. Rule 16

In support of this "Motion" defendant states:
1) That the assistant prosecutor in this case is knowingly using false testimony to procure defendants conviction; that the testimony of allege eyewitnesses Lorianne Morrow and Wendy L. Lockett is false and contrary to the scientific evidence and crime scene facts. Defendant is prejudiced by state's knowing use of false testimony. SEE C.F. State v. Davison, 46 F. 3d 68

1 of 3 pages

(11)

EX. B 183

2) the vague description depicting the crime scene details that will eventually exonorate, me, need to be fully develope before trial, to see if material facts exist for the trier of facts for findings of guilty beyond-resonable doubts:
a) Defendant request the assistance of an independent forensic Pathologist and crime scence reconstructionist to rebut the bias and controverted testimony of Dr. Thomas Gill, whom is an advocate for the state and not a partial fact finder; his credibility as a competent forensic doctor is doubtful, as he has a history of rehearsing and omitting facts in favor of prosecutors.
b) The assistant prosecutors on this case Amy McGowan and Dawn Parson are withholding exculpatory evidence that need to be discovered, "the depicting sketch diagram" taken by K.C. pd. crime scene unit "CST" Lutman Serial # 10775, witnesses prior criminal history and complete notes & reports catalog in police files related to this case, crime scene color pictures, x-rays taken from the victim body, the results of neutron activation analysis done on victims clothes, Luminel test, portion of any existing transcripts of Grand Jury proceedings which relate to the offenses with which defendant is charged containing testimony of those person whom the state used or intends to call as witnesses at a hearing or trial.

Case 4:12-cv-00416-BP Document 1-6 Filed 03/30/12 Page 6 of 38

EX. B

184

3) After my first trial got dismissed 11/16/04 the assitant prosecutor filed an "Information in Lieu" where as 99% of the witnesses listed there were never deposed and their testimony is unknown or their involvement in this case if any; how can defendant in this case put up a meaningful adversarial challenge to the states case if he's ambush by new set of witnesses and testimonies that defendant doesn't know exist prior to those or these proceedings.

Conclusion

In the past defendants attempt to file motions in his own behalf, Prose, have been rejected or ignored by this court. The courts have absolutely refused to entertain or consider them whatsoever. It is the defendants right to present a defense and have a hands on approach in the preparation of his defense. There is no reasonable strategy from downplaying, omitting, or bypassing the importance of the issues herein that will ultimately end in a just result.

Prayer

Wherefore, for the foregoing reasons plaintiff prays this court to grant defendant/petitioner with a "Evidentiary Hearing" within a reasonable time before trial so these issues can be fully adjudicated.

(11)

3 of 3 pages

EX. B

185

I KEITH L. CARNES, defendant in this case swear under the penalty of pejury that the foregoing is true and correct to the best of my knowledge. Pursuant to 28 USC §1746

Respectfully Submitted

Keith L. Carnes

MERLE F. HORNING
Jackson County
My Commission Expires
February 21, 2006

10/26/05

(11)

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COPY

186

KEITH CARNES,	)	
Appellant,	)	
vs.	)	WD No. 72916
	)	
STATE OF MISSOURI,	)	
Respondent.	)	

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
SIXTEENTH JUDICIAL CIRCUIT, DIVISION 5
Honorable W. Stephen Nixon, Judge

KEITH CARNES,	)	
Movant,	)	
vs.	)	Case No. 0816-CV04757
	)	
STATE OF MISSOURI,	)	
Respondent.	)	

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APPEARANCES

For Movant/Appellant:

MS. SUSAN HOGAN
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Gayle M. Wambolt, Certified Court Reporter
Official Court Reporter, Division 5
Sixteenth Judicial Circuit
Jackson County, Missouri

Gayle M. Wambolt, CCR No. 462
Registered Merit Reporter

(12)

Trial Counsel
PCR Testimony

(12)

not conclusively say the range from which the shot had been fired. In normal cases where I've represented people or prosecuted them for murders, you look to see at close-range shootings what's called stippling. You look for that.

But in this case there was no stippling. If the court wants me to explain what stippling is, I will.

But it's the -- when a bullet comes out of the gun, there's the wadding that comes out of the projectile. If you shoot at close range, you will normally have that soot and wadding lodged into the flesh of the person who is shot. That was not present here.

Q Okay. So there wasn't any indication, then, that that was actually a short-range or a close-range gunshot?

A Well, that wasn't present. But you can have a shooting at close range and not have stippling.

Q Right.

A I mean, that -- but most times you will find stippling.

Q And in this case there wasn't any stippling or soot?

A No, correct, there was not.

going to turn your attention to our first issue, which is ineffective -- we're alleging ineffective assistance of counsel for not consulting with and retaining a qualified forensic reconstructionist and having them testify at trial. Claim

188

Did you ever have any discussion with Mr. Carnes about the possibility of hiring somebody as a forensic reconstructionist or a crime scene reconstructionist?

A Not at the first trial, but at the second trial, yes, ma'am.

Q Okay. And did -- so I'm assuming -- well, let me just ask you, who brought up the subject?

A Mr. Carnes.

Q Mr. Carnes. And what exactly -- how did that come about? How did it come about that he asked you about that?

A He -- in the jail he had been reading. Some people had talked to him about it and indicated to him that there may be the possibility of finding somebody who could reconstruct the crime scene.

Q Okay. And did you -- what conversations did you

EX. C

have with him about that? Lie opinion vs. fact

A I explained to Mr. Carnes that based on what had happened at that scene, the fact that the scene had been contaminated, the fact that no one had come out and actually observed and cordoned off that crime scene at the time, that it would be difficult to find somebody who could reconstruct that crime scene.

Q Okay. And at some point did you have contact with Mr. Gary Rini?

A Yes. Mr. Carnes' family hired Mr. Rini.

Q Okay. And who is Mr. Rini?

A Hold on just a minute. I have his CV.

Mr. Rini was a forensic science consultant out of Cleveland, Ohio.

Q Okay. And when -- how is it that you came to have contact with Mr. Rini?

A He called me on the phone as a result of Mr. Carnes' family telling him to call me.

Q Okay. And at that time when he called you, had anybody retained him to work on this case?

A I don't know, ma'am. I didn't retain him.

Q Okay. You didn't retain him yourself?

A No, I didn't.

Q Okay. And when in the course of the case was it

that you had this initial contact with Mr. Rini?

A I initially talked to Mr. Rini before the second trial. No, that may be wrong. Hold on just a minute, ma'am.

No, I did not talk to Mr. Rini until after the second trial. The second trial was, I believe, in November of '05. I didn't receive any contact from Mr. Rini until, like, January of '06, and then I contacted -- he contacted me again in February of '06. So I didn't know about him until after the trial was over with.

Q Okay. And do you know when it was that Mr. Carnes' family retained Mr. Rini?

A Again, ma'am, I had no personal knowledge of that because they did that without consulting me.

Q Okay. So you're not the person who retained him, it was all Mr. Carnes and his family?

A Correct.

Q And do you know who actually paid his fees?

A It would be hearsay. I got a letter from a lady named Tanille Benton, who was Mr. Carnes' girlfriend at the time, and she indicated to me that she had paid him. But I don't know for a fact.

Q Okay. But it wasn't you?

(12)

But you're only focusing, ma'am, on the one part of the crime scene because the crime scene actually was in two to three different locations. The first shot occurred -- supposedly occurred either on the corner of 29th and Wabash or 29th and Olive. So there's a crime scene there.

There's also the fact that on the corner of 29th and Wabash, there was a house with a fence there, and there were shell casings found there on the porch and in the yard area of that house. There was shell casings found there. Okay.

And there was a witness, the lady who lived in that house, who came to court to testify that she heard shooting from -- in her yard and she actually called the police to point out to them where certain shell casings were located in her front yard and on her porch. That would have been consistent with the testimony of both Ms. Morrow and Ms. Lockett that the first shots had occurred on that corner area.

So you got two different crime scenes. Mr. Rini was only testifying about the scene at the Fish Town. He had no testimony about the original crime scene down at the house. So, you know, a matter of trial strategy I decided, well,

to testify about part of it anyway.

Q Okay. And let me just ask you about that then.

Did the fact that there were those shell casings found in the lady's front yard at 29th and Wabash, did that somehow play into your defense that the testimony of Wendy Lockett and Lorianne Morrow was inconsistent with the physical evidence?

A Well, yes and no, because the physical evidence was that this guy had -- I mean, the facts that were presented was that Mr. White had been shot at on the corner of 29th and Wabash, that he was hit there, and then took off running and was shot at again.

Those shell casings there would indicate, yes, that shooting -- someone was shooting at him there. Lorianne Morrow was stating that she wasn't standing right there, and Wendy Lockett was supposedly standing up the street. So neither one of them would have been able to testify that Mr. Carnes was the person shooting right there at the corner.

So we went with that, that they couldn't place him there. As the -- Mr. White goes

EX. C

through the field and runs up toward the Fish Town, that's when Lorianne Morrow and Wendy Lockett both say that they observed Mr. Carnes either chasing after him or running after him and shooting.

So what we're trying to establish was, no, that didn't happen because there was a -- as I told you earlier, there was a witness that we called who indicated that she was standing on the corner of 29th and Wabash when the shooting took place and that she knew Mr. Carnes and that he was not the person who was doing the shooting at that corner.

Q Okay. All right. I'm going to move on to another topic, which has to do with not calling a Margo Thomas to testify for the defense. Do you recall in reviewing the discovery, that there was a police report pertaining to a Margo Thomas?

A Right. And -- yes, yes. The answer is yes.

Q Do you recall what she told the police essentially?

A Hold on just a minute and I'll tell you.

Margo Thomas was stating that she saw a man carrying a long-barrel, assault rifle with a pistol-type grip. The male walked north toward

the alleyway and that she observed the person shooting at the alleged victim, that she saw a medium to heavyset, short, black man jump a fence at the house on the corner of 29th and Wabash and begin shooting. She was not able to say whether the man she saw jumping the fence earlier was Mr. Carnes.

Q Okay. So did Mr. Carnes express to you any concern or desire to call Margo Thomas to testify at his trial?

A Well, we talked about calling Margo, but there's -- there were a couple of problems.

Number one, Margo was hard to locate.

But, number two, if Margo testified consistent with what she put in her police statement, then that would validate the fact that the shooting took -- well, the initial shooting took place right there in front of that house on 29th and Wabash because she said she saw somebody jump the fence of that yard, and that's the same yard where those shells were found. So I'm -- calling Margo would defeat the purpose.

Q Okay. And did you try to locate Margo Thomas before either one of the trials?

A I tried to locate Margo. In fact, I knew Margo

(13)

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

190

COPY

STATE OF MISSOURI,
Respondent,
vs.
KEITH L. CARNES,
Appellant.

Appeal No. WD 67426

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
SIXTEENTH JUDICIAL CIRCUIT
Honorable Gene R. Martin, Senior Judge

STATE OF MISSOURI,
Plaintiff,
vs.
KEITH L. CARNES,
Defendant.

Case No. 16CR03006321

TRANSCRIPT ON APPEAL
VOLUME I OF I
Pages 1 thru 572

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(14)

JIM BOUCK, CCR, CSR, PSSC, CVR-CM-RVR
Official Reporter, Circuit Court of Jackson County, Missouri

that the prosecutors will get the officers that I requested -- the additional police officers I -- requested.

MS. PARSONS: I didn't say that I would do that. Generally the way it works when the defendant would like police to testify, they serve subpoenas to the police department and then they come. I'm not going to run around and try to get eight more witnesses on line for a trial today. I can give him Lisa Morris's phone number. Mr. Toney knows how to get ahold of police officers, he knows how to subpoena them. We will try our best, but I've got the burden and I've got my own witnesses. I'm not going to run around for the defendant and get his police witnesses.

MR. TONEY: I didn't ask the State to run around and get the witnesses, Your Honor. If they're not going to do that, we know how to go through it. We'll go through the police department and we'll serve them with subpoenas. When we tried to contact them to ask if the officers were going to be here, the response I got was, "Ask the prosecutor." So we'll do it the other way.

THE COURT: Well, as I indicated earlier here, I'm not going to be able to be here tomorrow morning and we'll have to resume this trial tomorrow afternoon. So that will give you the morning to do what you need to do in order to get those individuals here for your part of the case.

MR. TONEY: Correct.

THE COURT: And that may be workable.

THE DEFENDANT: Excuse me, Your Honor. I was under the impression that I would be able to -- because I filed a lot of my own motions. I sent them to the courts, sent them to the lawyers, sent them to the prosecutor. I sent a motion asking for the subpoenas almost two months ago, so it's not like this is a surprise. I've already requested these motions, and they are certified and notarized. I thought I was doing everything the way it was supposed to be done. I've filed a lot of motions, over 15, and I've never had a hearing on one of them. So these are things that could help me and my defense. So I would just like to --

MR. TONEY: Your Honor, I mean, I know how to get those additional police officers. If

the State tells me that they can't find them, we can go through their chain of command to make sure that they appear.

THE COURT: How many are you talking about, numberwise?

MS. PARSONS: Seven.

MR. TONEY: Seven.

THE COURT: Okay. Well, with that, are you ready to proceed?

MR. TONEY: The defense is ready, Your Honor.

THE COURT: Is the State ready?

MS. PARSONS: We are ready. I filed an amended information, and I need to prove him up again.

THE COURT: Oh, yes. I want to make a record on that.

Mr. Toney, the State filed a motion for leave to file a second amended information on August 19 of this year and attached a copy of the proposed second amended information. As I understand, basically, the only real change there is that they've added the language that he was acting in concert with others, and that's the only thing.

MR. TONEY: I've reviewed that and I believe that they filed that as a result of the evidence that came in at the last trial. So I believe that there will be evidence that there was another individual at the scene by the name of Gary Kitchen, and I believe that's why they filed that. As far as we're concerned, it doesn't change their burden of proof, so it doesn't affect us in any way.

THE COURT: Right. And as I understand it, you've had notice of this since last August, at any rate?

MR. TONEY: Correct.

THE COURT: So I've signed an order granting leave to file that, and it's been filed as of today. So I just wanted you to be aware of that change and that we're trying it on the second amended information.

THE DEFENDANT: Your Honor, I would like to know, if possible -- I've been reading a lot, trying to figure out as much as I can towards this issue, but am I allowed to ask for a reconstructionist of the crime scene?

THE COURT: You'll have to deal with that with your attorney, as to what he wants to

(15)

EXHIBIT (b)

Petition pg. 4

present in the way of evidence in your defense. I'm not here to --

THE DEFENDANT: Well, this is something that we both know that I want, and I figured that if I asked you that you have the final say-so on a reconstructionist of the crime scene.

THE COURT: We'll deal with that when it's offered, because I don't know what you've got or anything else. It's a matter of evidence and I can't prejudge it at this time.

MR. TONEY: Your Honor, I want to make the record clear. I've explained to Mr. Carnes that there is no such thing in this type of case as a reconstructionist of the crime scene. There are crime scene technicians who will testify as to what they found when they went out, as to where they found different items. Those people are going to be called as witnesses -- I assume that they will be -- by the State. If not, we'll call them for the defense. I have tried to explain to him that you can't reconstruct a murder scene in the fashion where you have someone come out and say, "Well, this happened at this time and this happened at that time," because that's just not something that we can do.

We can have the people who were out there and investigated it come and testify as to what they found, and we intend to do that.

Pet. pg. 5

THE COURT: All right. That said, are we ready to proceed?

MS. PARSONS: Yes. I would like to proceed, first, with proving the defendant up. I'll just go ahead and do that.

On or about June 22nd, 1998, the defendant pleaded guilty to the felony of robbery in the first degree in Case Number CR97-08010 in Division 14 of the Circuit Court of Jackson County. He is a prior offender under Section 558.016. I tender to the Court State's Exhibit 2, which is a multiple-page document showing the defendant Keith Carnes. There was an Alford plea in Division 14, and then ultimately the probation wound up in Division 6. So I tender to the Court State's Exhibit Number 2, although it is just a bench trial and I'm not even sure what the actual effect would be.

MR. TONEY: Your Honor, we have seen that document. My understanding of proving him as a prior offender was to take sentencing away from the jury. There is no jury, so there is no

sentencing to take away from the jury.

MS. PARSONS: As I was doing that, the lightbulb went on and I just went into my normal routine, and there you have it.

192

THE COURT: All right. I'll take it under advisement. I want to look it over. There is really no urgency in making a ruling on that right now. I usually make detailed findings on it. So I will do that, since you have tendered Exhibit Number 2 in connection with your charge that he is a prior offender.

MS. PARSONS: I have another question. At the last trial -- I don't know if you did, but we had several motions in limine. Now, I understand that with a bench trial you can separate the wheat from the chaff, so I don't know if we want to go through all of the motions in limine or just take them up as they come along.

THE COURT: I would prefer that we take them up as they come along. Are these your motions or his motions, or both of your motions?

MS. PARSONS: Well, I know that he has one issue and we have three issues, but just the nature of a bench trial is such that you're going

to hear it anyway. So I'm not going to bring them up now. I'm going to bring them up as they come in, unless you would like to do it differently.

MR. TONEY: That's the way I intended to do it.

THE COURT: Very well.

THE DEFENDANT: Excuse me one more time before I finish. I would like to know, is it possible before this even goes any further that we could have an evidentiary trial to see if there is enough to even take it to trial?

THE COURT: No, no.

MR. TONEY: Your Honor, I tried to explain to Mr. Carnes that when the State indicts you do not get a preliminary hearing. What he is asking for would be a preliminary hearing. Because they went for an indictment, you don't get a preliminary hearing. I've explained that to him. I want the record to be clear that I have done my job as his lawyer and explained to him that an indictment eliminates your getting a preliminary hearing, and so you don't get one in this situation.

THE COURT: Basically, the grand jury

(16)

concluded, the Court adjourned.)

- - - - - -

MOTION TO CONTINUE SENTENCING

The hearing was had on Friday, February 10th, 2006, before the Honorable GENE R. MARTIN, Senior Judge, sitting in Division 70 of the Circuit Court of Jackson County, Missouri, at Kansas City, and the proceedings hereinafter set forth were had and entered of record.

The Plaintiff was represented by Ms. Dawn Parsons and Mr. Brady Twenter, Assistant Prosecuting Attorneys, Floor 7M, Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106.

The Defendant was present in person and represented by Mr. Willis Toney, Attorney at Law, 1100 Main Street, Suite 1600, Kansas City, Missouri 64105.

The following proceedings were had:

THE COURT: The case before the Court this afternoon is numbered 16CR03006321-02. It is entitled State of Missouri versus Keith L. Carnes.

The record should reflect that the State is appearing by assistant prosecuting

attorneys Dawn Parsons and Brady X. Twenter, and defendant is here in person and represented by his attorney, Mr. Willis Toney.

This matter was previously before the Court on November 7th of 2005 for trial, at which time the defendant waived trial by jury and the case proceeded as a bench trial before this judge. The evidence was presented on several different days and ultimately concluded on November the 14th of 2005.

The Court then took the matter under advisement and, on November the 22nd, made its finding that the defendant was guilty of the charge of murder in the first degree.

At that time, the Court granted the defendant 10 additional days in which to file post-trial motions and ordered a presentence report. The Court then continued the matter to Friday, January 10th of 2006, at 1:30 p.m., for further proceedings.

At that time, the defendant filed a motion for continuance, which was granted, and the matter was continued until this date for further proceedings.

The Court now has another motion filed

by the defendant's attorney requesting additional time, suggesting a 30-day time period. In addition to the motion filed by counsel for the defendant, on February 9, the defendant filed a pro se motion for time extension/sentencing, is the way it is denominated, and, in addition, on February 7 of this year, he filed a pro se motion to review fact-finding, review exculpatory evidence, suppress findings of guilt.

On that same date, February 7 of 2006, he filed, pro se, a supplement to motion to suppress finding of guilt, together with various attachments referred to in that document.

The Court also has before it what purports to be a letter from the defendant to the presiding judge of this court, J.D. Williamson, which is dated December 22 of 2005, and it's addressed to whom it may concern. It also has some documents attached to it.

So I guess the first matter to be taken up at this time is the motions for continuance of this post-trial hearing on defendant's motion for new trial.

Mr. Toney, are you prepared to explain to the Court the need and request for this

EX. E

continuance at this time?

MR. TONEY: Yes, sir. May it please the Court?

THE COURT: Yes, sir.

MR. TONEY: Your Honor, on January the 10th, this matter was originally set for sentencing. We had an in-chambers conference and I expressed to the Court that my client wanted to retain a forensic expert to analyze the crime scene and to do crime scene reconstruction. I also explained to the Court at that time that the problem had been locating a person who was willing to do that and coming up with the necessary funds to retain that person to do that, and that we were making all diligent efforts to get that done.

Right after that hearing, contact was made with a Mr. Gary A. Rini, R-I-N-I, who is out of Cleveland, Ohio, to do this reconstruction and to be able to testify and present evidence at the defendant's motion for new trial hearing.

My client's family has, to the best of my knowledge, paid a retainer to this Mr. Rini to do the investigation. I personally spoke with Mr. Rini two or three days ago and we went over

(17)

Case 4:12-cv-00416-BP Document 1-6 Filed 03/30/12 Page 17 of 38

Bank of America

Cashier's Check

WILLIS TONEY

Remitter

0008444

Cost Center #

30-1 / 1140 0002248175

DOWNTOWN KC

Banking Center/Dept. Name

JULY 19, 2005

Date

For

Pay

$ ***$2,670.00***

25-14-3435B 7-1999

Pay To The Order Of

*******KEITH CARNES******

DKS8

Bank of America, N.A.
San Antonio, Texas

NON-NEGOTIABLE

BY

Authorized Signature

0088444 316 72005#010 $2670.00 K

001641004845

25-14-3435B 7-1999

Bank of America

Cashier's Check

30-1 / 1140 0002248452

Remitter WILLIS TONEY

Cost Center # 0008444

Date AUGUST 17, 2005

For

Banking Center/Dept. Name 1200 MAIN

Pay

$ ***2,670.00***

25-14-3435B 7-1999

Pay To The Order Of

TENILLE BENTON

Bank of America, N.A.
San Antonio, Texas

BY

Authorized Signature

RDG/T010

"001641004845"

MR. TONEY: Yes.

THE COURT: And also to compensate him for his --

MR. TONEY: Time to travel, expenses?

THE COURT: (Continuing) -- time and travel and expenses while he comes here to testify, or is this witness going to be asking for more money at that time?

MR. TONEY: My understanding was -- he sent me a copy of the contract and it indicated that he needed a certain amount, and that amount included preparing the report and testifying and everything. It was like, "This is how much I need. Flat amount, this is what I need."

THE COURT: Well, you know, I have a great deal of reluctance in continuing the matter and continuing the matter over and over again after the trial has already been concluded and the evidence was presented, and unless there is something in this expert's findings and testimony that reveals newly discovered evidence that was not discoverable, it's going to be pretty difficult for him to convince me that you and your client and he are doing anything more than reopening the case to present additional

EX. G

evidence --

MR. TONEY: I understand that, Your Honor.

THE COURT: (Continuing) -- which could have been and should have been presented at that time, and if it was not available at that time, then the request for continuance should have been made before trial started in order to get this evidence, which was not done, for whatever reason, until after the trial was over with and you got a bad result and now the defendant, the family, and so forth wants to basically reopen the case.

MR. TONEY: Your Honor, I'm not trying to reopen the case, and I would never stand in front of the Court and ask for a frivolous continuance. You know that's not my nature. I wouldn't do that. I honestly believe that this is in the best interest of my client and I do not see where 30 days is going to hurt anybody, and we would know when we walk out today that there will be no other times if we don't have this in. Also, I know if he doesn't give me anything that presents newly discovered evidence I wouldn't be able to call him anyway, or I could call him but it wouldn't change anything.

THE COURT: How do we know he would be available 30 days from now? He might say, "Oh, I've already got a commitment in New York or San Francisco."

195

MR. TONEY: Because I specifically told him that I would probably not be allowed more than 30 days and asked him if he would be available 30 days from now, and he told me he would be, and I knew that 30 days from now was actually March the 10th. So I asked if he would be available and he told me he would be available.

THE COURT: Ms. Parsons, I know you're objecting to this continuance, vigorously in opposition to it.

MS. PARSONS: I am. Actually, a crime scene expert is going to give you an opinion. That's not newly discovered evidence. That's just somebody else's opinion.

THE COURT: I understand.

MS. PARSONS: So, yes, I do oppose it.

THE COURT: Well, I'm going to grant it. I want to give this individual every opportunity I can to present whatever he has for

the Court's consideration, but there are certain rules that we must be guided by and I'm really going to be looking for any newly discovered evidence that was not discoverable during the course of the trial.

So, anyway, the matter will be continued at defendant's request until March 10 at 1:30.

THE DEFENDANT: Thank you, Your Honor.

MR. TONEY: Thank you.

THE COURT: That's all.

(Whereupon, the matter having been concluded, the Court adjourned.)

SENTENCING

The hearing was had on Friday, March 10th, 2006, before the Honorable GENE R. MARTIN, Senior Judge, sitting in Division 70 of the Circuit Court of Jackson County, Missouri, at Kansas City, and the proceedings hereinafter set forth were had and entered of record.

The Plaintiff was represented by Ms. Dawn Parsons and Mr. Brady Twenter, Assistant Prosecuting Attorneys, Floor 7M, Jackson County Courthouse, 415 East 12th Street, Kansas City,

(19)

Trial [redacted]
Two

Dr. Gill

196

Transcript of the Testimony of

Date: April 20, 2005
Volume:

Case: STATE OF MISSOURI v. KEITH L. CARNES

Printed On: 7/26/2005

Patricia A. Manners
Phone: 816.881.3711
Fax:
Email: patmanners@comcast.net
Internet:

(20)

forth, and so you don't see anything underneath. But we looked at the clothing and that's a very important part of our examination, and we don't see any evidence of these materials deposited on the clothing surrounding the entrance wounds.

Q. So does that lead you to the conclusion that these shots came from a distance?

A. That is correct.

Q. Now is there anything that would indicate that someone stood over this man with a gun and shot him? Right over him two or three feet, right over and shot him, anything to indicate that?

A. It seems inconsistent unless he was extremely tall. No. I'm only 5 08" or 5 09"

Q. Now showing you what's been marked as State's Exhibit No. 35, in our conversation about this case we talked about what would happen if a person was shot from a very close range with that type of gun, correct?

A. Yes.

Q. What would you expect to find if the person was shot with someone standing right over them with that kind of gun?

A. Well, in close proximity and particularly in a contact or near contact or partial contact wound,

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there's an additional wound particularly like on the head where you have a curved surface. You'll get radiating tears at the entrance wound because of the gas effect. In other words, a lot of gas is injected into the entrance wound when the muzzle isn't very far away from the surface of the skin. Again, we don't see anything like that in these wounds, so we don't see any of that feature, either, in this case.

Q. So based upon your experience and within a reasonable degree of medical certainty, would you conclude that this person was not shot from someone standing right over him?

A. Well, like I say, unless they can get two and a half to three feet away, with a weapon that size, with that long barrel and everything, no.

Q. Also you said there were three shots that entered the body and one that grazed, correct?

A. Yes.

Q. And two of those shots came from the back, correct, when the person was shot in a backward direction?

A. That's correct.

Q. Again not consistent with someone laying on the ground and someone standing over him shooting, correct?

A. Yeah, I guess.
Q. Okay. Now, the shot to the head which you say was the cause of death here--
A. Yes.
Q. --do you have any medical evidence that would support the statement that someone stood over him and shot him in the head? Is there any medical evidence to support that?
A. None.
Q. Thank you.

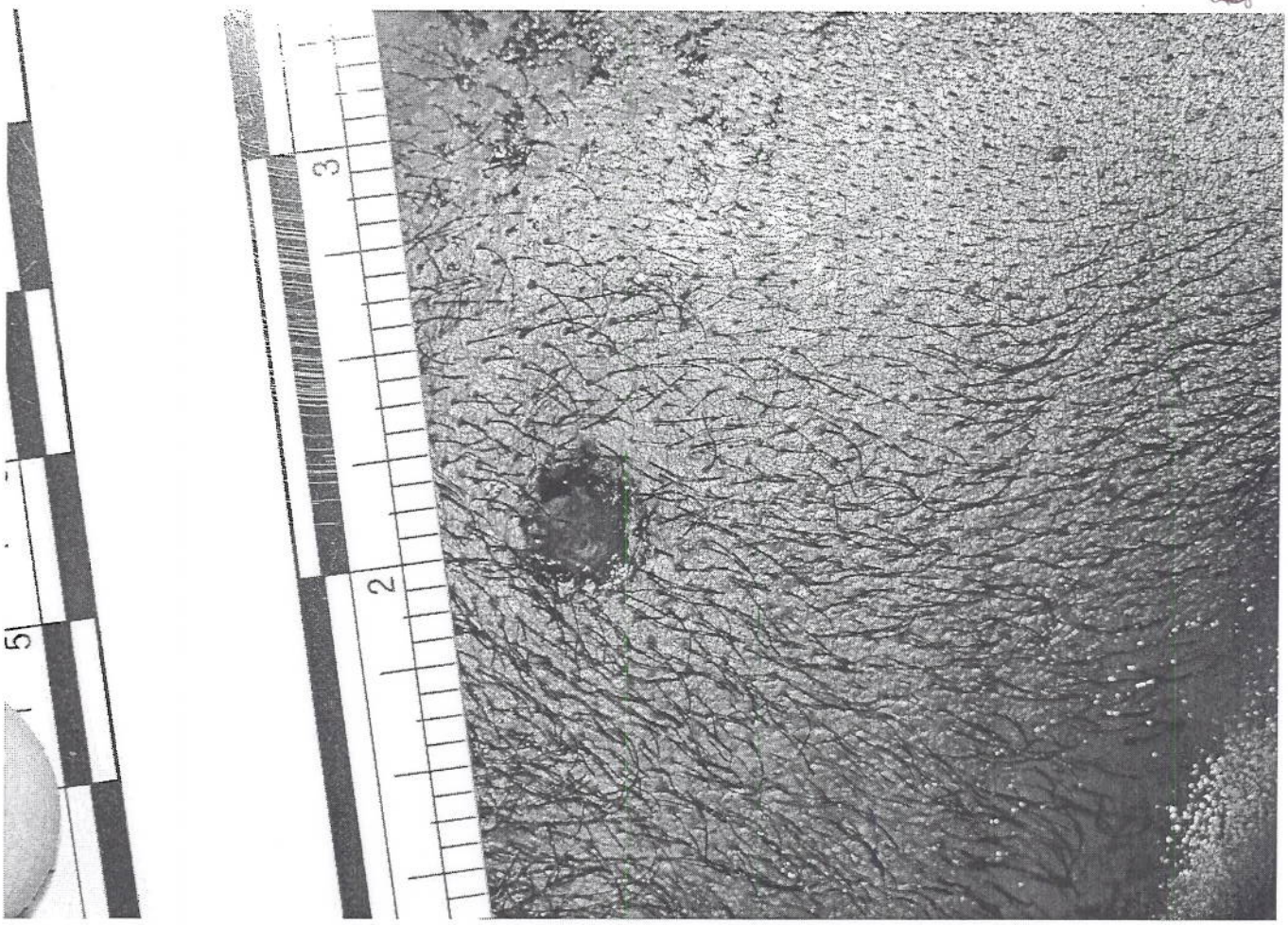
MR. TONEY: I have no other questions, Your Honor.

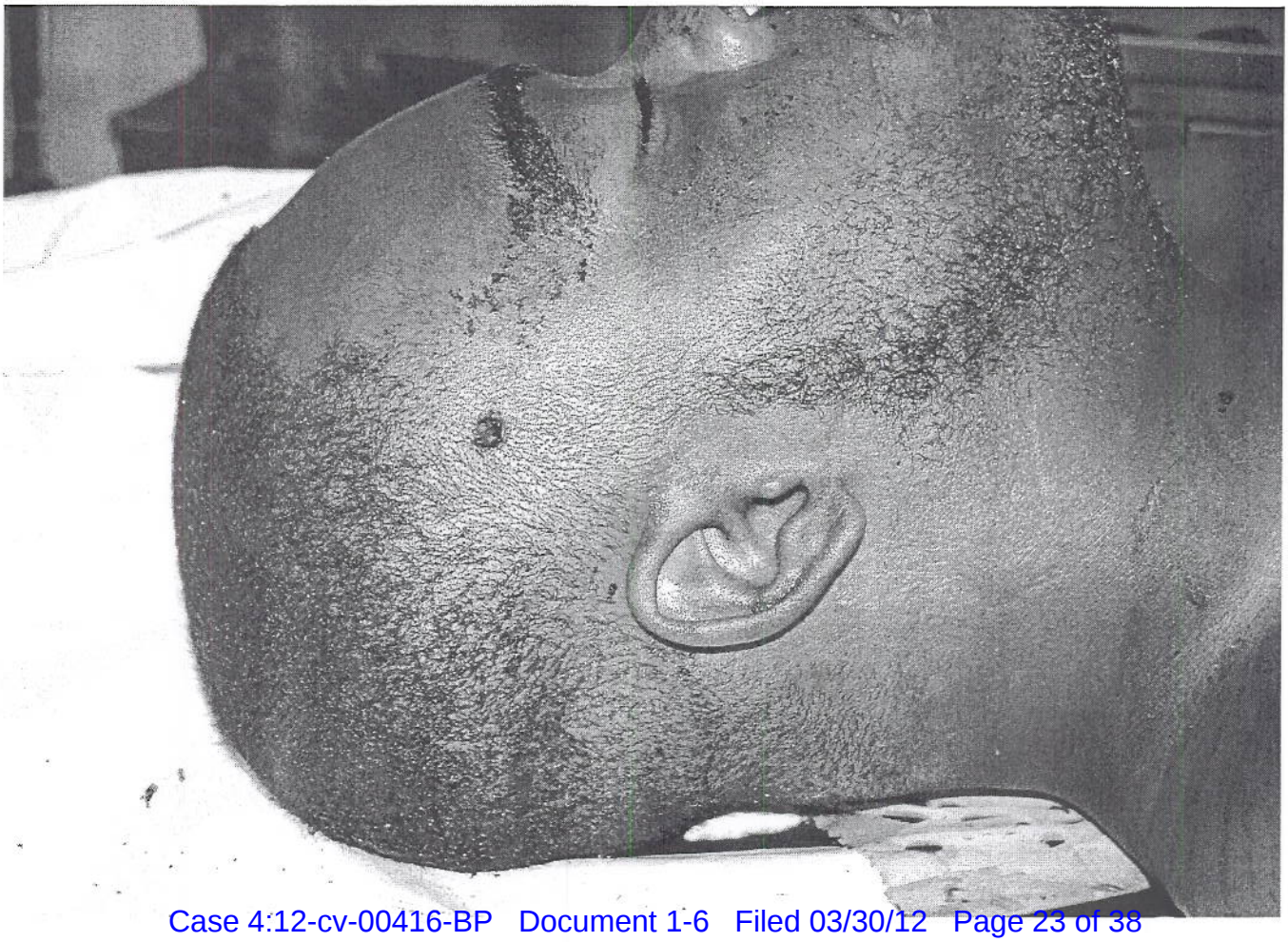
MR. TWENTER: State just has one question.

REDIRECT EXAMINATION

BY MR. TWENTER:

Q. Doctor, when you say it was a distant shot, that means farther than two and a half to three feet away?
A. Yes.
Q. Not necessarily 20 feet away?
A. Yeah. I have no way of knowing beyond that. As I say, there's no indication, so we just really can't.
Q. So it could be said there is some medical evidence to support that somebody two and a half feet away could have fired the shot?





Trial "3" Testimony of Lorianne Morrow

(24)

Q All right. So you're saying this guy not only ran towards the people shooting at him, but he runs around a house and back in the same direction? Is that what you're saying?
A Right. He could have been high, I don't know.
Q He could have been high. Okay. And you did say he was out there selling drugs, right?
A Right.
Q And did you know him to be a drug user?
A I know him to smoke PCP.
Q Okay. So you think he could have been high?
A Yeah.
Q Okay. So then you say you see Kiki and Mr. Carnes running after this guy?
A Yes.
Q And then he goes up 29th Street, is that right?
A Yes.
Q All right. Where do you go?
A By the church.
Q You go up this way. Did you go through the lot?
A The parking lot of the church.
Q Well, how did you get to the parking lot of the church? You're starting down here. Did you go up 29th Street to get to the parking lot up here or do you go up Wabash?

A I go up 29th Street to get to the parking lot.
Q So you go straight up 29th Street?
A Right, and cut over.
Q All right. So where is Larry?
A Where is Larry? At this time, at the Fish Town.
Q So Larry always was on 29th Street, is that correct? Is that correct, ma'am?
A Is that correct? Yes.
Q So he ran straight up 29th Street? I want to make sure that I'm right on this.
A After he came through the alley, straight up 29th.
Q Straight up 29th Street. So he never was in this lot over here?
A No.
Q Okay. You're positive about that?
A Yes.
Q All right. So after Larry got off 29th Street, you say he gets in the Fish Town parking lot?
A Right.
Q When he gets to the Fish Town parking lot, who is behind him?
A Keith is.
Q Okay. Where is Kiki?
A He's not there. He never did follow them all the way up there.
Q All right. So when he gets to that parking lot, what happens?
A He starts shooting him some more. He turned the boy over.
Q Does he fall?
A Did Larry fall? Yeah.
Q And where are you at?
A You can see it. You have to be in that area to know what's going on.
Q Here's the church.
A Right.
Q So you're over here by the church?
A Right.
Q Okay. So you go up 29th Street, cut behind this building, and go into the parking lot?
A Right.
Q And you're saying Larry goes straight, correct?
A Right.
Q All right. And we know that his body is found right here.
A Right.
Q So you're standing back over here?
A Right.
Q And you're saying you're looking from beside the church across here?
A Yes.
Q All right. Now, as Larry runs up there, did he fall down?
A He falls down.
Q All right. And you're saying that at that point Mr. Carnes goes over --
A Yes.
Q Does he bend over, bend over him?
A He rolls him over.
Q How does he roll him over, ma'am?
A He bent over.
Q He bent over. Okay. And where is his gun when he does this?
A I couldn't see the gun anymore in his hand, but he rolled him over.
Q How did he roll him over, ma'am? I mean, there's got to be a way to roll him over. Stand up and show me how he rolled him over.
A He rolled him over. I didn't see his gun no more. He rolled him over like this (Indicating), turned around and shot him some more. I know what I saw.
Q So he rolled him over -- put the gun down so he could roll him over? Is that what he's doing?

EX. I

(25)

A He had a big gun in his hand, sir.
Q Okay. But, ma'am, to roll over this guy's body, he's got to do something. So does he put the gun down?
A Yes.
Q He puts the gun down?
A I didn't see the gun in his hand no more.
Q So he puts the gun down, rolls him over, and then does he pick the gun back up?
A And shoots him some more.
Q You saw this?
A Yes.
Q Okay. Now, ma'am, do you remember testifying at this court hearing before? Do you remember coming here?
A I said he shot him some more.
Q Now, when he turned him over, how many times did you say he shot him?
A Maybe about five, six more times.
Q Five or six more times?
A Right.
Q All right. From point-blank range?
A Yes.
Q Okay. So he puts the gun down, rolls the body over, picks the gun back up, and shoots him five

EX. I

times?
A Right, which was senseless.
Q Okay. So if he shot him that close five times -- that's what you're saying, five times?
A He shot him five more times. There was five more shots fired.
Q Five more shots fired from right up over him, correct?
A Yes.
Q You're positive about that?
Yes, ma'am? Are you or not?
A I'm positive about that.
Q Okay. And after he reaches down, turns him over, and shoots him five times, what does he do then?
A He took off.
Q What did you do?
A I took off, too. If someone sees somebody kill somebody, do you think they're going to try to hurt them too? Come on, now.
Q Did you ever see Mr. Carnes in the yard at 2846?
A Have I ever seen him there before?
Q That night, did you see him in that yard?
A I seen him on the balcony porch.
Q No, not the building here. At 2846 Wabash is a house on the corner. Did you see him in that

yard?
A Yes.
Q You did? Remember, ma'am, you promised to tell the truth.
A Wait a minute. Repeat that again, please, because you're saying so many different things.
Q All right. Well, I don't want to confuse you; I just want to get the truth. 2846 Wabash, the house on the corner --
A That's that green house.
Q Right. Did you see him in that yard?
A I seen him around that way.
Q Now, wait a minute, you just said a few minutes ago you saw him --
A On the porch.
Q You saw him on the porch?
A The shell casings and all of this stuff was on the porch.
Q Who told you the shell casings were on the porch?
A Didn't nobody tell me anything. I was there.
Q How do you know the shell casings were on the porch, ma'am?
A I seen him shoot from the porch.
Q Who told you the shell casings were on the porch, ma'am?

A I seen him shoot from the porch. I know what I seen. A man is dead, it's not a game anymore.
MR. TONEY: Your Honor, I would like to refer to the trial transcript from the first trial, page 39.
Have you got that, Ms. Parsons, page 39?
Do you have it now?
MS. PARSONS: Uh-huh.
Q (By Mr. Toney) Ms. Morrow, do you remember being asked the question, "You didn't see Mr. Carnes jump that fence, did you?" Do you remember being asked a question like that?
A I don't remember.
Q Can you read and write the English language?
A Can I read and write English? Yes, I can.
Q Okay. I want to show you a certified copy of your testimony from the first trial that we had, and the question that was asked to you was, "Okay. And, in fact, that front yard has a fence around it, doesn't it?"
What is your answer, line 5?
A "Yes."
Q Read the whole line, please.
A "Yes, it has a fence around it."

(26)

Trial "3" Testimony of Wendy Lockett

A Yeah.
Q And is he running through the lot?
A Yeah, he come through the lot.
Q Okay. Through the church parking lot?
A Yes.
Q The same direction that you had been going?
A Not the same direction.
Q Which way is he coming from?
A I don't know exactly which direction he was coming from, but I know he had to be coming from downward, because I'm at a slant. I'm going through it at a slant and he's coming kind of like in a little dip and straight.
Q All right. And when you see him, is anybody chasing him?
A At that point, no, at least I didn't see nobody.
Q And then you said you saw him stumble into the Fish Town parking lot?
A Yeah. He was not running at that point. He was more so, like, stumbling.
Q Did you see anybody behind him?
A At that point, no.
Q And when you say you saw him fall on the ground, then do you see anybody?
A That's when I see two figures. Who they were, I

don't know.
Q At that point, you can't tell us who they were?
A No, sir.
Q Just two figures. Were these figures in black? Were they dressed in black?
A Dark clothing.
Q Dark clothes. You can't tell us whether they were black clothes, just dark clothes?
A Yeah. I would say the hooded outfit was black. I would say that for sure.
Q And then you said you saw Mr. White hit the ground?
A Yes.
Q And then you saw the two people go over to him, is that correct?
A Yes.
Q Did you observe anybody place a gun down on the ground?
A No, sir.
Q Did you observe anyone take an assault rifle and place it down on the ground?
A No, sir.
Q Okay. Did you observe anyone reach down and roll Mr. White over?
A No, sir.

(28)

Q Okay. And you indicated that you saw a flash fire a shot, is that correct?
A Correct.
Q One shot?
A One.
Q Okay. You did not hear five shots go off?
A No, sir.
Q Just one shot?
A Just one.
Q And you indicated that that shot was from, what, standing right over him or back a ways? Which one was it?
A Standing up on him.
Q And one shot?
A Uh-huh.
Q You indicated that at that point you couldn't tell who was doing the shooting, correct?
A No, I couldn't.
Q And that you couldn't determine who was doing that shooting until the person turned around, is that correct?
A Exactly.
Q Now, I want to show you what's been marked as State's Exhibit Number 3. This depicts the area that we're talking about, is that correct?

EX. J

A Yes.
Q All right. Now, this is the church parking lot here, is that correct?
A Correct.
Q Would you tell the Court where you were standing at when you say you observed --
A When I observed, right there (Indicating).
Q You were standing at the end back here?
A This area, yes.
Q Okay. Could you take this pen and put your initials, if you can reach it -- I'll have to move it for you. Put your initials on the church parking lot --
A Where I was standing?
Q (Continuing) -- where you were standing.
A (Complies.)
Q So that would be on the side of the church?
A It's not on the side. It's catty-corner to the church.
Q In the back of the church, is that right?
A Catty-corner to the church, not in back of it, not on the side of it. I'm still in the open, actually.
Q Is it dark back there?
A Yes and no.

Q Is there a light there?
A Yes.
Q Were you standing in the light?
A Half and half.
Q Did you see another person standing back there with you?
A No, sir. There was no other person back there.
Q There was no other person standing back there?
A Not that I saw.
Q Okay. And you're indicating that you're standing here and you're looking across this way --
A Yes.
Q (Continuing) -- across Prospect over to here, and that's when you see the person turn around?
A Yes.
Q Okay. And can you see their face clearly?
A Yes.
Q Okay. And you indicated that what you saw was a patch and that's what made you believe that it was the defendant, correct?
A Yes.
Q And that's what you're basing your identification on, seeing the patch?
A Yes.
Q And you're seeing that patch from clear across --

A It's not a far distance at all. The distance was very close, actually.
Q And it's nighttime?
A Yes, that's correct, and there is a light right up under the defendant as well. Right up under Larry where he fell down at, there is a bright light. That parking lot is brightly lit, period.
Q Okay. Now, I want to call your attention to -- you're indicating that you didn't see anybody chasing Larry through a lot, correct?
A Correct.
Q Okay. And that there was only one shot fired?
A Yes.
Q And there were two people out there?
A Yes.
Q Okay. Did you see the gun?
A I seen the flash of a gun. I can't say that I actually saw a gun. I seen what appeared --
Q To be a gun?
A (Continuing) -- to be a gun.
Q Okay. And you can't tell me whether it was a rifle, or a pistol, or anything like that, right?
A I can tell you it wasn't a rifle.
Q It wasn't a rifle?
A No, it wasn't a rifle.

Q Okay. So it wasn't a long gun?
A No, it wasn't a long gun.
Q It wasn't a gun like this (Indicating)?
A No, sir.
MR. TWENTER: Could we get for the record what that is?
MR. TONEY: I'm sorry, this would be State's Exhibit Number 58.
Q (By Mr. Toney) It wasn't a long gun like State's Exhibit 58?
A No, sir.
THE COURT: I might add that 58 has never been identified. It's not in evidence. I don't know where it came from and I have no idea what you're talking about.
MR. TONEY: I understand, Your Honor.
THE WITNESS: Excuse me?
MR. TONEY: I was responding to the Judge's question.
Q (By Mr. Toney) Now, I just showed you State's Exhibit Number 58, which is a long rifle-type gun. Did you look at that gun?
A Yes, I looked at it.
Q And the gun that you say you saw wasn't like that, is that correct?

EX. J

A No, it wasn't. No, it wasn't.
Q Okay. Do you know what a pistol looks like?
A Yes.
Q Okay. Was it a gun similar to a pistol?
A It was similar to a pistol.
Q Similar to a pistol. All right. And the person, you said, fired this gun that was similar to a pistol one time, is that correct?
A Correct.
Q Do you know who the other person was standing up in that parking lot?
A No, sir.
Q Do you know whether that person had a gun?
A No, sir, I don't know.
Q Now, when you're standing in the church parking lot, are you crouched down or are you standing up?
A Standing up.
Q Okay. And you said you look over and you see one shot being fired, correct?
A Correct.
Q All right. And then you take off running?
A After the shot was fired and the person turned and I identified who I identified in my mind that person was, yes, I took off running.
Q Okay. So you didn't look at that person for any

Trial "3" Testimony of Dr. Gill (Medical Examine)

correct?
A Only if it's closer than two and a half to three feet.
Q If it is closer than two and a half to three feet?
A Yes.
Q Okay. Now, let's reverse the body and have them on their back; instead of in the prone position, they're on their back.
A All right.
Q All right. Would you expect to see the type of trajectory that you found here if the person is laying on their back and the person is being shot from a close angle -- close range?
A Well, again, if the head is turned to the side -- and I'll indicate here that I'm turning now to the left side so that this exposes the right side of the head. If there is a person lying on their back, they could from a certain angle -- I guess it would be back here. Depending on how far it was turned, you could get this kind of an angle.
Q Okay. Now, you and I talked about that earlier and you indicated that in order to get a shot like that the shooter would almost have to be crouched down to shoot, instead of standing over?
A Yes. Because of the forward component of the

trajectory, it would seem like that would be the case.
Q Right. Just so the Court is clear, if they're laying on their back, from a close shot, they would have to be -- what you told me earlier is that they would have to be crouched down sort of like this to be able to shoot and get that type of trajectory?
A Well, again, I suppose the issue is how far would their head have been turned. If they were tucking their head or something like that -- unfortunately, the human head has got a lot of mobility, but I was thinking of it, you know, sort of in a very simple way, like this (Indicating).
Q All right. Now, Doctor, do you remember telling me that based on the trajectory, the way the bullet traveled, the trajectory of the bullet's path, and the lack of finding indications of stippling or soot, that it was inconsistent with the person being shot while laying on the ground?
A Well, it would be -- if I said that, I'm sorry. I mean, it's possible, obviously, from what I've just said.
Q I want to call your attention to the trial

transcript, page 27, line 9.
MS. PARSONS: We don't have it.
MR. TONEY: You don't have it?
MS. PARSONS: Just go ahead, we'll figure it out.
MR. TONEY: Okay.
Q (By Mr. Toney) "QUESTION: Now, is there anything that would indicate that someone stood over this man with a gun and shot him, right over him, two or three feet, right over him and shot him, anything to indicate that?" What is your answer?
MR. TWENTER: Your Honor, objection. I don't believe this is proper impeachment. The question Mr. Toney asked him is not the question he is being asked in that transcript.
THE COURT: Overruled.
THE WITNESS: Well, the only thing I see here --
Q (By Mr. Toney) I would like for you first to tell the Court for the record what your answer was.
A The answer is, "It seems inconsistent, unless he was extremely tall. No."
Q And you said, "No," correct?
A Right. I may not have been thinking clearly, but

EX. K

I think the point is, I don't think there's any evidence one way or the other. I think it's kind of an open question. There is no evidence that the person was standing over them, but it's possible.
Q And that's what I'm trying to get at.
A Yeah, I agree.
Q To a reasonable scientific certainty, there is no evidence here that the person was standing over him. That's what you've told me before. Is that what you're saying now?
A Yeah. You -- not you personally, but it would be asking too much of the physical evidence to make -- this is more supposition. This is something that goes beyond the purview of what we can find out from the autopsy.
Q All right. Now, we talked about what you would expect to see with a high-velocity rifle shot. Do you remember us having that conversation?
A Yes.
Q All right. Would you explain to the Court what you would expect to see from a high-velocity shot to the cranium as from, say, a pistol? What would you expect to see, the difference there?
A Well, again, the issue of the amount of energy,

Thursday July 14 2004

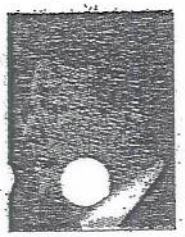
209

Limit doctor's work, prosecutor insists

By BENITA Y. WILLIAMS
The Kansas City Star

Jackson County Prosecutor Mike Sanders said he wants deputy medical examiner Thomas Gill excluded from performing homicide autopsies because past incidents could jeopardize Gill's credibility.

"I respectfully request that your office make every effort to avoid the necessity of Dr. Gill's testimony in court and preclude him from making findings and issuing reports on any future autopsies performed by your office," Sanders said in a letter Tuesday to Jackson County Medical Examiner Thomas Young.



Sanders

On Wednesday, Young said he had no plans to limit Gill's duties, that he was confident of Gill's abilities and that he did not think the doctor's past

See EXAMINER, B-3

EXAMINER: Limit doctor's work, prosecutor sa

Continued from B-1

would jeopardize prosecutions.

"If I bring into question Mr. Gill's credibility, I undermine my whole operation, not just in Jackson County but in all of western Missouri," said Young, whose office also performs autopsies for Clay, Platte and Cass counties. "I'm not going to run away, because there is nothing to run away from."

During an interview Wednesday, Sanders said the issues surrounding Gill include a driving while intoxicated charge in the 1990s, Gill's dismissal from the Indianapolis coroner's office and the suspension of Gill's Indiana medical license.

In 2001, the Sonoma County, Calif., district attorney dismissed a murder case amid questions about Gill, then the county's medical examiner, rehearsing testimony with a speech therapist. However, Gill said, the state attorney general later said he had not testified falsely.

Gill also defended himself on Wednesday, saying, "I don't think there is any need to worry."

First glance

■ Jackson County Prosecutor Mike Sanders asks that deputy medical examiner Thomas Gill be barred from homicide autopsies.

He defended rehearsing his Sonoma County testimony but said he would not do so again. He also alleged the dismissal was caused in part by a "botched" investigation.

Gill acknowledged he was charged with drunken driving on Aug. 14, 1994, but said he entered treatment and for six years underwent job performance monitoring. He said he has been sober almost 10 years.

He said his license was suspended in the spring of 1995 when a counselor's miscommunication allowed him to take a position in California without permission from Indiana. Gill said the matter was resolved, and his Indiana license was restored in June 1995. The license has since lapsed, he said.

Gill said he submitted letters of recommendation and was investigated before receiving his Missouri medical license in January 2003. Gill said he also retains his California medical license.

Young said he knew about Gill's past when he hired him on Nov. 1, 2002.

"That's ancient history," he said.

On Wednesday, Young said he was angry with Sanders for waiting months to raise issues about Gill and for discussing them with the press without first coming to Young.

Sanders' letter "is not a serious attempt at trying to deal with the problem," Young said. "This is media aggrandizement, and it's not appreciated. ... He puts me in a position where he embarrasses me publicly, and I resent it."

Sanders, who became prosecutor on Nov. 12, 2002, said he thought that Gill was allowed to testify only in cases where he was reviewing the work of others or where the cause of death was not at

Sanders said he recently l
Young planned to lift those
tions.

Young said Gill had neve
restricted.

Clay County Prosecutor
Norris said he too asked Yo
restrict Gill after recently le
about the man's backgrounc

"I preferred that he not w
anything from Clay County,"
said.

Young said he met with
and agreed to give depositio
porting Gill's credibility or
testify about Clay County au
when necessary.

Platte County Prosecut
Zahnd declined to co
Wednesday, saying he had
reviewed the information
Gill. The Cass County pro
could not be reached for co

*To reach Benita Y. Williams
son County government repo
call (816) 234-4789 or send
to bwilliams@kcstar.com.*

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

COPY

KEITH L. CARNES, Movant,
vs.
STATE OF MISSOURI, Respondent.

No. 0816-CV04757

DEPOSITION OF GARY A. RINI, M.F.S., D.A.B.F.E.,

produced, sworn and examined via telephone on Tuesday, August 25, 2009, from the Office of the State Public Defender, Suite 500, 920 Main Street, Kansas City, Missouri, before

SHARON L. CRAWFORD, CCR, RPR,

a Certified Court Reporter in and for the states of Missouri and Kansas.
Taken on behalf of the Movant.

APPEARANCES

FOR THE MOVANT:
Ms. Susan L. Hogan,
Office of State Public Defender
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920 Main Street, Suite 500
Kansas City, Missouri 64105

FOR THE RESPONDENT:
Ms. Dawn M. Parsons,
Assistant Jackson County Prosecutor
Jackson County Courthouse, 7-M
415 East 12th Street
Kansas City, Missouri 64105

(32)

Page 14

collected at the scene was consistent with someone standing over the decedent and shooting them while standing over them while the decedent was on the ground?

Q. So I guess what I hear you saying is the purpose that you were originally retained for was just to look at the blood stain patterns?

A. That's correct.

Q. And since that was not a viable -- would you say a viable thing to look at or --

A. It was not possible to do a blood stain pattern reconstruction because the stain patterns had been covered and essentially contaminated by whoever put the blue absorbent chux over them and basically the stains were never documented prior to doing that or at least I wasn't presented with any photos of the documentation prior to them being placed on the stains. So I couldn't do what I was asked to do based on the material that I was given.

Q. So essentially since that kind of pathway was kind of impeded, you decided to take a different path to look at what happened at the crime scene?

A. Yes, and I also think that was another question that was posed in the, you know -- you know, my recollection of it is that the police alleged that the

Page 15

shooter was standing over the victim and shot the victim while the victim was on the ground. Does the evidence contained in the report support that conclusion. So I had to look at the material and make a determination to that point.

Q. Okay. And were you able to reach a conclusion based on that examination or that review?

A. Yes.

Q. Okay, so you were. And what conclusion did you reach based upon the review of the other evidence in the case?

A. Well, the question was whether or not again the shooter was standing over the decedent and shot the decedent while the decedent was on the ground, and what I determined was that based on the evidence that was looked at, there was no evidence which would support that conclusion. And that was based on the angles of the bullets as described in the autopsy report, the appearance of the wounds, particularly the head wound and the location of the head wound and the absence of any cartridge case or bullets on or about the body or on the ground surrounding the body or any documentation of any bullet fragments or concrete or asphalt material that might have been dislodged as a result of a bullet passing through the body. In essence, there was no evidence

Page 16

present that you would expect to see had a weapon been fired downward into the ground or into the body of this individual.

Q. Okay. And did you examine the police reports as to whether there were any shell casings also found on the parking lot where the decedent's body was found?

A. Yes, I did.

Q. And what kind of evidence did you find as far as that was concerned?

A. There were no shell casings.

Q. Okay. And did that support your conclusion then that the shooting couldn't have taken place there?

A. Yes.

Q. Okay. And am I stating your conclusion properly, that your conclusion was that nobody -- that the decedent was not actually shot while he was lying on the parking lot?

A. I'm saying that there's no evidence to support that at all.

Q. I'm sorry, yeah, that the evidence does not support the finding that he was shot on the parking lot?

A. The conclusion was that someone -- the allegation was and the conclusion by the police as reflected in their report was that someone was standing

Page 17

over the decedent and shooting the decedent on the ground. I looked at it, looked at the wounds, the appearance of the wounds, the bullet path through the body, and of course you're looking for ejected cartridge cases and bullets, and none of those items were present, which, you know, you can't have a shooting with a semi-automatic weapon without those types of evidence present.

Q. Okay. And I was going to ask you about that. Do you remember what kind of weapon the police reports indicated might have been involved?

A. It was -- my recollection was it was a semi-automatic rifle or a handgun. The one witness said it was a long gun or a rifle or a semi-automatic handgun. She wasn't quite sure which one it was. But my recollection is it was black and it was a long gun.

Q. And do you recall whether there was any weapon identified as the weapon used to inflict the wounds to the decedent?

A. No, I never was able to determine that they were able to make that determination.

Q. Okay. And what do you recall as to the distance at which the wounds were inflicted on the decedent?

A. My recollection from the autopsy report, that the pathologist stated that they were distance wounds.

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(33)

Page 18

Q. Okay. And would that have been consistent with having been generated by gunfire close to the decedent?
A. No.
Q. Okay. So if the person had been standing directly over the decedent, would you have expected it to be a distance wound?
A. Well, a distance wound is one that's basically classified as exceeding 48 inches or beyond, so that's four feet. And you would also expect to see at that point some soot or tattooing and none of that was present either. But if you have a shoulder weapon or a long rifle, I can't imagine someone holding it up four feet above the ground to fire into it. But nevertheless, whether it was a rifle, shoulder weapon or a handgun, the fact that there were no bullets or bullet fragments or shell cases around, in my estimation based on the evidence I reviewed precludes the possibility of someone standing over him and shooting him.
Q. All right. And were you able to find whether there was any physical evidence that would directly link Mr. Carnes to shooting the decedent while he was laying in the parking lot?
A. Well, I didn't see any evidence that linked Mr. Carnes to the shooting at all.
Q. And what did you base that on?

Page 19

A. The review of the materials that I was given.
Q. All right. And I just -- we have your report here as Movant's Exhibit No. 2, and it's dated June 25, 2006. Is that the report that you actually generated in response to this request by Ms. -- I forget her name already -- by Ms. Benson and Mr. Toney?
A. Yes, this was -- yeah, it was June 25th, 2006, and that was delivered to Mr. Toney or sent and mailed to Mr. Toney.
MS. HOGAN: And we'll go ahead and admit that as Movant's Exhibit 2 I guess for purposes of the deposition.
Q. (By Ms. Hogan) Now, you said you mailed that report to Mr. Toney?
A. I'm pretty sure I mailed that. It could have been faxed but I'm almost positive I mailed it.
Q. Did you also send a copy to Mr. Carnes?
A. I sent it to I think Ms. Benson for him.
Q. Okay. Do you not -- were you ever asked to do this review before Mr. Carnes went to trial?
A. The request for my assistance came between the first and the second trial.
Q. Okay. All right. When did you conduct your actual analysis in relationship to the second trial?
A. Well, it would have been, as we mentioned

Page 20

previously, sometime between -- by my recollection sometime between December of 2005 and June of 2006.
Q. Okay. So do you have any knowledge as to whether the case, whether you were retained before a trial was actually had on behalf of Mr. Carnes?
A. Well, I know that I was -- I was asked if I would be available to travel to Kansas City to testify, and I had made myself available, and I want to say it was a September date but I can't be sure. But they were, they being Ms. Benson and a friend of Mr. Carnes and I have forgotten his name, were both trying to get Mr. Toney to speak to me and to get me to testify, and I was having trouble making contact with Mr. Toney. He wouldn't return my phone calls or e-mails. He finally did call me and then we had a discussion about the case and what Ms. Benson and others' expectations were of me, and I told Mr. Toney the kind of things I could do and that I was available for testimony, and then he said, okay, I'll send you the stuff, and he eventually sent it to me. But I just had a sense that his trial strategy in my opinion wasn't, didn't include my testimony and I was never called.
Q. Okay. And that's the big question. Before giving this deposition today, were you ever called to testify on behalf of Mr. Carnes?

Page 21

A. No.
Q. And so you didn't testify at his trial for first degree murder then?
A. No.
Q. Would you have been willing to testify at that trial if you had been retained in time to testify at that trial?
A. As a matter of fact I was retained in time for the second trial. Is that what you're talking about?
Q. Well, were you ever asked to testify at the second trial?
A. By Ms. Benson and Mr. Carnes, yes.
Q. Okay. But not by counsel?
A. No.
Q. Okay. Let me catch up my notes real quick here. And if Mr. Toney had asked you to testify on behalf of Mr. Carnes, would you have made yourself available?
A. Yes, I had blocked it out, I was ready to go.
Q. And would your opinion have been any different if you had been asked to review the evidence and the reports at sometime earlier than the trial?
A. No.
Q. Okay. So if you had been called to testify at the trial, would your opinion have been the same as it is today?

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(34)

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213

WD 72916
IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

KEITH L. CARNES

Appellant,

vs.

STATE OF MISSOURI,

Respondent

Appeal from the Circuit Court of Jackson County, Missouri
16th Judicial Circuit, Division 5
The Honorable S. Stephen Nixon, Judge

EXHIBIT ON APPEAL

Petitioner's Exhibit #1 – Original Deposition of Gary A. Rini

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to Shaun Mackelprang, Chief Counsel, Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102 on the 1st day of June, 2011.

Susan L. Hogan

215

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

ORIGINAL

KEITH L. CARNES,)
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Respondent.)

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PETITIONER'S EXHIBIT 1 9/4/09

Case 4:12-cv-00416-BP Document 1-6 Filed 03/30/12 Page 38 of 38